IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8994 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDAPRASAD RAMKUMAR TIWARI - Petitioner(s)

Versus

AHMEDABAD MUNICIPAL TRANSPORT SERVICES & 1 - Respondent(s)

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Appearance :

MR PRABHAKAR UPADYAY for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2005

ORAL JUDGMENT

In the present petition, the petitioner-employee has challenged the stand of the respondent Corporation that the petitioner is not entitled to receive pension even after opting for voluntary retirement pursuant to

the scheme circulated by circular No.7 dated 10th June 2003. The petitioner claims that he had completed 19 years of service before opting for voluntary retirement pursuant to the said scheme. The petitioner applied for voluntary retirement on 14th July 2003. Subsequently, however, it was pointed out to him that considering his length of service, he would not be entitled to pension. Despite this, he gave in writing to the Corporation that he is conscious that as per the pension rules considering his service, he is not entitled to receive pension and therefore his voluntary retirement cannot be accepted and he is, however, on account of his personal reasons unable to continue in service. He therefore tenders his resignation which may be accepted. He agreed that he is not entitled to pension and will not make any claim in future. Apparently, on the basis of this writing, he was permitted to leave the service and was paid other benefits of lump-sum payment envisaged under the voluntary retirement scheme. The petitioner now contends that since pension scheme of the Corporation envisages that upon 10 years pensionable service, an employee would be entitled to receive pension, he should also be held entitled to receive pension proportionately.

3. The respondents have filed affidavit in reply and resisted the petition. Learned advocate Shri Munshaw appearing for the respondents submitted that the petitioner had completed only 13 years continuous service and not 19 years as contended by the petitioner. It was further pointed out that when the petitioner opted for voluntary retirement, it was pointed out to him specifically that considering his pensionable service and the pension rules, his request for voluntary retirement cannot be accepted and he may resign but would not be entitled to receive pension. After being pointed out specifically with the above situation, the petitioner nevertheless, opted for resigning even if it meant that he would not be held entitled to pension. This is clear from his undertaking given to the Corporation produced at page 21 along with the affidavit in reply filed by respondent No.1. Thus, instead of accepting the voluntary retirement of the petitioner, the Corporation accepted his resignation. As noted earlier, in terms of the scheme, he was also paid other benefits. He was, however, not held entitled to pension.

3. I find no illegality having been committed by the respondents. The contention that the employee upon

retirement after 10 years of service should be held entitled to receive pension cannot be applied to a case where a person resigns from service. Such a clause would apply to a person retiring on superannuation. The Hon'ble Supreme Court has held that resignation cannot be equated with retirement and a person resigning from service is not entitled to receive pension. Reference in this connection can be made to a decision of the Hon'ble Supreme Court reported in AIR 2004 SCW 1402.

4. In somewhat similar situation, learned single Judge of this Court had also come to a similar conclusion. In an order dated 18th August 2004 passed in Special Civil Application No.13424 of 2003, the learned single Judge observed that since the workman did not complete 20 years of pensionable service, he would not be entitled to pension under the pension scheme. The workman resigned from service with full knowledge that he would not be entitled to get pension, he cannot claim that right to receive pension which is otherwise also not available to him.

5. Even if the contention of the petitioner that initially his request for voluntary retirement was

accepted, the same would entitle him to receive pension only if due and payable. He had not put in sufficient number of years of pensionable service before he left the service of the Corporation. The claim for receiving pension, therefore, cannot be accepted. The petition is therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)